

Federal Reserve System

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shall also determine whether the agreed upon procedures were conducted and filed in a manner satisfactory to the Board.

(d) *Qualifications for independent public accountants.* The audit shall be conducted by an independent public accountant who:

(1) Is registered or licensed to practice as a public accountant, and is in good standing, under the laws of the state or other political subdivision of the United States in which the savings association's or holding company's principal office is located;

(2) Agrees in the engagement letter to provide the Board with access to and copies of any work papers, policies, and procedures relating to the services performed;

(3)(i) Is in compliance with the American Institute of Certified Public Accountants' (AICPA) Code of Professional Conduct; and

(ii) Meets the independence requirements and interpretations of the Securities and Exchange Commission and its staff; and

(4) Has received, or is enrolled in, a peer review program that meets guidelines acceptable to the Board.

(e) *Voluntary audits.* When a savings and loan holding company or non-depository affiliate obtains an independent audit voluntarily, it must be performed by an independent public accountant who satisfies the requirements of paragraphs (d)(1), (d)(2), and (d)(3)(i) of this section.

§ 238.6 Penalties for violations.

(a) *Criminal and civil penalties.* (1) Section 10 of the HOLA provides criminal penalties for willful violation, and civil penalties for violation, by any company or individual, of HOLA or any regulation or order issued under it, or for making a false entry in any book, report, or statement of a savings and loan holding company.

(2) Civil money penalty assessments for violations of HOLA shall be made in accordance with subpart C of the Board's Rules of Practice for Hearings (12 CFR part 263, subpart C). For any willful violation of the Bank Control Act or any regulation or order issued under it, the Board may assess a civil

penalty as provided in 12 U.S.C. 1817(j)(15).

(b) *Cease-and-desist proceedings.* For any violation of HOLA, the Bank Control Act, this regulation, or any order or notice issued thereunder, the Board may institute a cease-and-desist proceeding in accordance with the Financial Institutions Supervisory Act of 1966, as amended (12 U.S.C. 1818(b) *et seq.*).

§ 238.7 Tying restriction exception.

(a) *Safe harbor for combined-balance discounts.* A savings and loan holding company or any savings association or any affiliate of either may vary the consideration for any product or package of products based on a customer's maintaining a combined minimum balance in certain products specified by the company varying the consideration (eligible products), if:

(1) That company (if it is a savings association) or a savings association affiliate of that company (if it is not a savings association) offers deposits, and all such deposits are eligible products; and

(2) Balances in deposits count at least as much as non-deposit products toward the minimum balance.

(b) *Limitations on exception.* This exception shall terminate upon a finding by the Board that the arrangement is resulting in anti-competitive practices. The eligibility of a savings and loan holding company or savings association or affiliate of either to operate under this exception shall terminate upon a finding by the Board that its exercise of this authority is resulting in anti-competitive practices.

§ 238.8 Safe and sound operations.

(a) *Savings and loan holding company policy and operations.* (1) A savings and loan holding company shall serve as a source of financial and managerial strength to its subsidiary savings associations and shall not conduct its operations in an unsafe or unsound manner.

(2) Whenever the Board believes an activity of a savings and loan holding company or control of a nonbank subsidiary (other than a nonbank subsidiary of a savings association) constitutes a serious risk to the financial

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safety, soundness, or stability of a subsidiary savings association of the savings and loan holding company and is inconsistent with sound banking principles or the purposes of HOLA or the Financial Institutions Supervisory Act of 1966, as amended (12 U.S.C. 1818(b) *et seq.*), the Board may require the savings and loan holding company to terminate the activity or to terminate control of the subsidiary, as provided in section 10(g)(5) of the HOLA.

(b) [Reserved]

Subpart B—Acquisitions of Saving Association Securities or Assets

§ 238.11 Transactions requiring Board approval.

The following transactions require the Board's prior approval under section 10 of HOLA except as exempted under § 238.12:

(a) *Formation of savings and loan holding company.* Any action that causes a savings association or other company to become a savings and loan holding company.

(b) *Acquisition of subsidiary savings association.* Any action that causes a savings association to become a subsidiary of a savings and loan holding company.

(c) *Acquisition of control of savings association or savings and loan holding company securities.* (1) The acquisition by a savings and loan holding company of direct or indirect ownership or control of any voting securities of a savings association or savings and loan holding company, that is not a subsidiary, if the acquisition results in the company's control of more than 5 percent of the outstanding shares of any class of voting securities of the savings association or savings and loan holding company.

(2) An acquisition includes the purchase of additional securities through the exercise of preemptive rights, but does not include securities received in a stock dividend or stock split that does not alter the savings and loan holding company's proportional share of any class of voting securities.

(3) In the case of a multiple savings and loan holding company, acquisition of direct or indirect ownership or control of any voting securities of a savings association or savings and loan

holding company, that is not a subsidiary, if the acquisition results in the company's control of more than 5 percent of the outstanding shares of any class of voting securities of the savings association or savings and loan holding company that is engaged in any business activity other than those specified in § 238.51 of this part.

(d) *Acquisition of savings association or savings and loan holding company assets.* The acquisition by a savings and loan holding company or by a subsidiary thereof (other than a savings association) of all or substantially all of the assets of a savings association, or savings and loan holding company.

(e) *Merger of savings and loan holding companies.* The merger or consolidation of savings and loan holding companies, and the acquisition of a savings association through a merger or consolidation.

(f) *Acquisition of control by certain individuals.* The acquisition, by a director or officer of a savings and loan holding company, or by any individual who owns, controls, or holds the power to vote (or holds proxies representing) more than 25 percent of the voting shares of such savings and loan holding company, of control of any savings association that is not a subsidiary of such savings and loan holding company.

§ 238.12 Transactions not requiring Board approval.

(a) The requirements of § 238.11(a), (b), (d), (e) and (f) do not apply to:

(1) Control of a savings association acquired by devise under the terms of a will creating a trust which is excluded from the definition of savings and loan holding company;

(2) Control of a savings association acquired in connection with a reorganization that involves solely the acquisition of control of that association by a newly formed company that is controlled by the same acquirors that controlled the savings association for the immediately preceding three years, and entails no other transactions, such as an assumption of the acquirors' debt by the newly formed company: Provided, that the acquirors have filed the designated form with the appropriate